IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.1245 OF 2004

Smt.Leelabai Gajanan Pansare & 3 ors..Appellants

vs

The Oriental Insurance Co. Ltd & ors..Respondents

Mr.Y.S.Jahagirdar, Sr.Counsel i/b Ms.Gauri Godse for Appellants

Mr.Preshnik Nadar i/b Mr.Raymond Samuel for Respts

CORAM : D.G.DESHPANDE AND
SMT ROSHAN S.DALVI, JJ
DATE: 20th December, 2006

JUDGMENT (Per Smt R.S.Dalvi,J)

1. The appellants are the landlords of the respondents. The suit premises has been tenanted by the appellants to the respondents. The appellants have issued a notice for termination of tenancy dated 15th April, 2002 under section 106 of the Transfer of Property Act,1882 as amended in March, 2003 to terminate the contractual tenancy between the parties. That having been done, in the normal course, a decree for eviction would have been passed.

2. The only contention of the respondents (defendants in suit) is that the protection under the Maharashtra Rent Control Act,1999 (MRC Act) is available to them, and hence, despite the notice of termination of tenancy, their tenancy cannot be determined simplicitor under the Transfer of Property Act.

3. The respondents contend that they are a government company. Government companies are not exempt under section 3 of the M.R.C.Act which deals with exemptions. Consequently, the M.R.C. Act will apply to the monthly lease granted to them and hence, their lease cannot be determined by a notice under the Transfer of Property Act, simplicitor. It is the contention of the appellants that the respondents are exempted from the provisions of the M.R.C.Act under section 3 thereof as they are a public sector undertaking or a Corporation established under the

General Insurance Business (Nationalisation Act) 1972 (Insurance Act).

4. The only short question in this appeal is to determine whether the respondents are exempted from the provisions of the M.R.C.Act.

5. Section 3 of the M.R.C.Act, which deals with exemptions is as follows :

S.3 Exemption.

(1) This Act shall not apply -

(a) to any premises belonging to the Government or a local authority or apply as against the Government to any tenancy, licence or other like relationship created by a grant from or a licence given by the Government in respect of premises requisitioned or taken on lease or on licence by the Government, including any premises taken on behalf of the Government on the basis of tenancy or of licence or other like relationship by, or in the name of any officer subordinate to the Government authorised in this behalf but it shall apply in respect of premises let, or given on licence, to the Government or a local authority or taken on behalf the Government on such basis by, or in the name of, such officer ;

(b) to any premises let or sub-let to Banks, or any Public Sector Undertakings or any Corporation established by or under any Central or State Act, or foreign missions, internationalagencies,multinational companies and private limited companies and public limited companies having a paid up share capital of rupees one crore or more.

6. It can be seen from a reading of S.3 of the M.R.C.Act that the intent of the legislature is two-fold. Section 3, which relates to exemption under the M.R.C.Act, requires to be considered in its entirety. Under section 3 (1) (a) the premises belonging to the government and Local Authority are exempt. Hence, when the government is the landlord, M.R.C.Act does not apply. Under the said sub-section itself, the Act applies to premises let or given on licence to the government, Local Authority etc. Hence, though government as landlord would not fall within the rigours of the Act qua its tenant, the government as the tenant would get all the protections under the Act.

7. Counsel for the respondents took us through the Insurance Act. Under Section 3 (d) the Corporation

means General Insurance Corporation of India formed under section 9. Section 3 (h) defines a government company as a company defined under section 617 of the Companies Act. He argued that any other insurance company such as the respondents is not a " Corporation" under the said Act, but since the government holds 51 % of its share capital, a government company as defined under sections 617 of the Companies Act.

8. Section 4 in chapter II of the Insurance Act deals with transfer of shares of Indian Insurance companies to the Central Government. Under section 4 (1) of the said Act all the shares in the capital of every Indian insurance company stands transferred to and vested in the Central Government free of all trusts, liabilities and encumberances effecting them. Under section 4 (2) of the Insurance Act, the Central Government is required by a Notification, immediately upon the said transfer and vesting, to provide that the transfer of not less than 10 shares of every such

company to such business specified in the notification to enable such insurance company to function as a government company. It is not disputed that the respondents are one such insurance company whose shares came to be transferred and vested in the Central Government under section 4 (1) of the Insurance Act and who has been enabled to function as a government company as the respondent company was in existence before the Insurance Act came to be enacted in 1972.

9. **S**ection 9 in chapter III of the Insurance Act deals with the formation of General Insurance Corporation of India. Under section 9 (1), upon the commencement of the Insurance Act the Central Government is required to form a government company according to the provisions of the Companies Act, 1956 to be known as General Insurance Corporation of India for the purpose of superintending, controlling and carrying on the business of general insurance. The respondents contend that they are one such

government company formed by the Central Government under the provisions of the Companies Act, 1956. It is therefore, a government company as defined under section 3 (h) of the Insurance Act and not a “Corporation” as defined under section 3(d) of the Insurance Act.

10. Counsel on behalf of the appellants drew our attention to section 10 of the Insurance Act to show that upon transfer of all the shares in the capital of insurance company from the Central government vesting in a corporation, such a insurance company ceased to be a government company.

11. In the case of O.P.Dogra vs State 1982 Criminal Law Journal 1548 it was held that under section 10 of the Insurance Act, insurance company ceased to be a government company upon vesting of the shares in the corporation. In fact, this judgment itself shows that if such shares were not transferred

and did not vest in the insurance company, it would continue as government company. In fact, section 10 is converse of section 10A which has been by way of amendment in 2003. The shares of the corporation vesting in the central government would make it a government company.

12. Counsel for the respondents also drew our attention to section 10A of the Insurance Act which deals with transfer of shares by the Central Government vested in the corporation. Under the said section all the shares in the capital of the acquiring companies which interalia includes the respondents and vested in the corporation (i.e. General insurance Corporation of India) would, on commencement of the amended Insurance Act of 2002, stand transferred to the Central Government. He, therefore, contends that the government became a shareholder of the said company. Central Government holds more than 50 % of the share holding of the respondent company.

Consequently also, the respondents, whose shares are so transferred to the Central Government, would be a government company.

13. Under section 617 of the Companies Act, 1956 a government company is one in which the government holds not less than 51 % of the paid-up share capital. This wholly may be either by the Central Government or by State Government or both or by a subsidiary of a government company. Upon the vesting of all the shares in the capital of every Indian insurance company in the Central Government, government starts to hold the entire share capital of every Indian insurance company. Consequently, it would hold more than 51 % of the paid-up share capital of each of the insurance companies. Consequently, upon passing of the Insurance Act, ipso facto, all insurance companies became government companies under section 617 of the Companies act, 1956.

14. Counsel on behalf of the appellants contended that the definition of a government company under section 617 of the Companies Act, 1956 is preceded by the words “for the purposes of this Act”. Hence, such a definition is to be read only for the purpose of the Companies Act, 1956.

15. It must be remembered that the Companies Act was enacted in 1956. Insurance Act was enacted in 1972. In view of the aforesaid definition, which applied to the Companies Act only, the specific definition under section 3(h) of the Insurance Act laid down that government company under the Insurance Act would be a company as defined under section 617 of the Companies Act. Consequently, the said definition applies to all insurance companies whose shares came to be vested in the Central Government.

16. It is contended on behalf of the appellants

that the respondents are a Public Sector Undertaking (PSU) and hence exempted from the provisions of the M.R.C.Act, under section 3 (1) (b). It would therefore, be prudent to consider the status of “Public Sector Undertakings “ (PSUs) as landlords as well as tenants.

17. A public sector undertaking is not defined in the M.R.C.Act. It is to be seen whether a “public sector undertaking” and “government company” are synonymous. Mr.Jahagirdar drew our attention to the concept of a public undertaking in the Law Lexicon. A public undertaking therein is stated to be “that part of the industry which is controlled fully or partly by a public undertaking. “

18. Mr.Jahagirdar drew our attention to the definition of the word “establishment” in section 2 (e) of The Employment Exchange (Compulsory Notification of Vacancies Act) 1959 in which an establishment in public sector is stated to be the one managed by the

government, a government company, a statutory corporation or a local authority which is either owned, controlled or managed by the government. A government company is, therefore, necessarily in the public sector. But, all companies in the public sector are not necessarily government companies. They may be statutory corporations established under any Central, Provincial or State Act which may be either owned or controlled or managed by the government.

19. Several judgments have been shown to us laying down the concept of public sector undertaking. In the case of **Oil and Natural Gas Commission vs Collector of Central Excise 1992 Supplementary (2) Supreme Court cases 432** the practice and procedure laid down by the apex Court with regard to disputes between public sector undertakings and the Union of India is set out. There is a reprimand by the apex Court that public sector undertakings of the Central Government and the Union of India should not fight

their litigations in Court spending public money thereon.

20. Following upon that case, in the case of **U.P.Seb and another vs Sant Kabir Sahakari Katai Mills Ltd (2005) 7 Supreme Court cases 576** the State Electricity Board of Uttar Pradesh was held to be a public sector undertaking and not a State Government department. An observation in para 16 of that judgment shows that the ONGC case (supra) related to disputes between the Centre or the State and a public sector undertaking. There is, therefore, a distinction drawn between the "government" and public sector undertakings" which may be one of the four mentioned above. A public sector undertaking, therefore, can be a corporation in which the government has control or management which may not necessarily be a government company as defined in section 617 of the Companies Act.

21. An establishment in a private sector is necessarily is one which is not an establishment in the public sector. A government company can never be in a private sector. However, all companies in a public sector need not necessarily be government companies under section 617 of the Companies Act.

22. Our attention is also drawn to the terms “establishment in public sector” in The Payment of Bonus Act, 1965. In section 16 of the said Act, such an establishment is either a government company as defined in section 617 of the Companies Act or a corporation having at least 40 % of its share capital held by the government, the R.B.I. or a corporation owned by the Government or the R.B.I. Even under that section, therefore, there is a specific distinction between a government company as defined in section 617 of the Companies Act and other companies which are held or managed by the government.

23. In the case of **Hindustan Antibiotics Ltd vs The Workmen AIR 1967 Supreme Court 948 @ pg 954** a distinction between industries in private sectors and their treatment for socio-economic upliftment of the labour came to be considered in para 9. We are not concerned with those considerations. However, in that para, a distinction came to be made between industries, run by the Government departmentally and industries in public sector that is in limited companies, where the government owned the entire share capital or a part of it. These limited companies fall within the definition of section 617 of the Companies Act which definition applies also to those companies under the Insurance Act.

24. Our attention was also drawn to the case of Hindustan Steel Ltd, a company stated to be in the public sector in which the status of the employees came up for consideration. That was in the case of Dr. **S.L.Agarwal vs General Manager,Hindustan Steel Ltd, 1970 (1) Supreme Court cases 177.** In para 10

of that judgment upon distinguishing the case of that company from an English case, it was held that the said company was not a department of government and its employees could not be stated to be public servants holding a civil post. We may mention that after that judgment, which came to be pronounced in 1970, the employees of such a corporations have been treated differently with regard to their status as public servants.

25. For consideration of the status of a company another case to which our attention is drawn is that of M/s Alloy Steel Project which was claimed to be part of Hindustan Steel Ltd by its workmen and was claimed to be a separate establishment by the capital. In that case, which was the case of **M/s Alloy Steel vs Workmen, (1971) 1 SCC 536** upon considering the definition of the public sector, as per the definition of "establishment" in Payment of Bonus Act, it was held that an establishment in a private sector can only be owned, controlled or managed by a person or body

other than a government company or a corporation as defined in section 2 (16) of the said Act. That judgment therefore, necessarily lays down a distinction between a public and private sector undertaking. A public sector undertaking cannot be managed by a private person. Hence, all the companies managed otherwise than by a private person, or a private body would be public sector undertakings but, they may not necessarily be government companies as defined in section 617 of the Companies Act.

26. Our attention was drawn to the term "undertaking" referred to in para 175 of the Bank Nationalisation case i.e. case of **Rustom Cavasjee Cooper vs Union of India AIR 1970 Supreme Court 564**. However, in that case, only the concept of the term "undertaking" as opposed to public and private undertaking is dealt with.

27. Similarly, in the case of B**ira Kishore Naik vs Coal India Ltd & ors (1986) 3 Supreme Court cases**

338 nationalisation of coal mines was in issue. It was held that employees of private owners of mines could not be treated as government employees unless the mine is nationalised. We do not see how these cases assist the appellants since the question of nationalisation is not an issue in this case.

28. It can be seen that PSUs are exempted from the provisions of M.R.C.Act as tenants. Hence, they lose the benefits and privileges under that Act. They can be evicted by a notice under section 106of the T.P.Act simplicitor. However, their position as landlords is more secure. They are secured under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (P.P.Act). The public premises as defined in section 2 (e) of the P.P.Act are premises belonging to the Central Government, a company in which the Central Government holds 51% of the equity, a statutory corporation controlled by the Central Government, University, IIT,Port Trust Premises, State

Government Premises, Cantonment Board Premises, Municipal Corporation Premises in Delhi etc. These are all PSUs. However, they are not all necessarily government companies. (Only first 3 are government companies). The special privileges under the P.P.Act are conferred upon all the undertakings in the public sector, be they government companies or not. These undertakings are specifically set out in section 2 (e). The exception to section 3 under the M.R.C.Act does not specify each of these undertakings. Hence, in that section the specific absence of a government company shows the intent of the legislature that government companies would not be exempt from the provisions of the M.R.C.Act.

29. An illustration of a P.S.U. which is not a government company would further explain the specific legislative intent. The Khadi and Village Industries Commission established under the Khadi and Village Industries Commissions Act, 1956 (Khadi

Act) is a commission established by a notification issued by the Central Government in the Official Gazette as a body corporate having perpetual succession and a common seal under section 4 (1) of the Khadi Act. The members of the commission are all appointed by the Central Government under section 4 (2) of the Khadi Act,. The C.E.O. as well as Financial Advisors are also appointed under section 4 (2) for performing their respective functions. A reading of the Act shows that the Commission is indeed in the public sector and can be taken to be a P.S.U, since it is under the direct control of the Central Government. However, it is not a government company. Such a commission would therefore be exempt from the provisions of section 3 of the M.R.C.Act. A government company must, therefore, be taken to be on a separate pedestal by virtue of its being in the public sector (in which necessarily the government companies would be as against the private sector). It cannot betaken to be exempt from the provisions of M.R.C.Act in the

absence of the specific exemption of a Government Company. Hence, the exempted premises under section 3 (1) (b) of the M.R.C.Act are Public Sector Undertakings but, not government companies by their very absence in exemption clause under section 3 (1) (b).

30. The contention of the respondents that as they are government companies they are not exempt from the provisions of the Act as tenants is therefore, well-founded. The M.R.C. Act applies to the premises let to the government. The suit premises were let by the appellants to the respondents which is a government company. Consequently, by a notice simplicitor under section 106 of the T.P.Act the respondents cannot be evicted.

31. The learned trial Judge has considered this aspect correctly. Consequently, the appeal fails and is dismissed.

(Smt R.S.Dalvi, J) **(D.G.Deshpande, J)**

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